

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/18/1780

Re: 18 Candleriggs Court, Alloa, FK10 1EQ ("the Property")

Parties:

George Menzies, 158 Claremont, Alloa, FK10 2ER ("the Applicant")

Charles Slessor, 18 Candleriggs Court, Alloa, FK10 1EQ ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondent for possession of the Property at 18 Candleriggs Court, Alloa, FK10 1EQ be granted.

Background

- By application dated 11 July 2018, the landlord/Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for an order for recovery of possession of the property at 18 Candleriggs Court, Alloa, FK10 1EQ ("the Property") under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant stated that he considered he was entitled to repossession of the Property under Grounds 11 and 12 of Schedule 3 of the 2016 Act based on the tenant's/Respondent's alleged failure to pay a deposit and rent.
- On 30 July 2018 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondent under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

- On 8 September 2018 the Tribunal sent a copy of the application and invited the Respondent to make written representations to the application by 24 September 2018. The Tribunal advised both parties on 8 September 2018 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 26 September 2018. This paperwork was served on the Respondent by Stuart Miller, Sheriff Officer, Glasgow on 10 September 2018 and the certificate of execution of service was received by the Tribunal administration.
- The Respondent did not make any written representations by 24 September 2018.

Case Management Discussion

- The Tribunal proceeded with the Case Management Discussion on 26 September 2018. The Applicant appeared personally and was represented by Ms McCallum from Messers Jardine Donaldson, Solicitors, Alloa. The Respondent did not appear and was not represented.
- The Tribunal had before it the Private Residential Tenancy Agreement ("the tenancy agreement") between the Applicant and the Respondent signed and dated 12 January 2018, the Notice to Leave dated 16 May 2018 with the Sheriff Officer's Execution of Service dated 21 May 2018, various items of correspondence from the Applicant addressed to the Respondent dated from 26 April – 10 May 2018, a rent statement and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 addressed to Clackmannanshire Council. The Applicant's solicitor also produced an up to date rent statement.
- Ms McCallum moved the Tribunal to grant an order for eviction founding on Grounds 11 and 12 of Schedule 3 of the 2016 Act. She referred to the tenancy agreement and the obligation to pay rent of £420 per month and the obligation to pay the deposit of £400 which parties had agreed between them could be paid up. With reference to Ground 12 and the rent arrears Ms McCallum submitted that the last payment was £200 on 3 July 2018, with the payment before that being £200 on 7 March 2018. She submitted that the current arrears were £1820 and that the Respondent had been in arrears for over six months and that the total amount of arrears amounted to over a month's rent. The Tribunal enquired as to whether or not there were any housing benefit issues. The Applicant explained that he was not aware of any and was aware that the Respondent worked.

- With reference to Ground 11 and the obligation to pay the deposit, Ms McCallum stated that her client's position on the deposit was a fall back position and that she was intent to drop the case under Ground 11 and only rely on Ground 12 of Schedule 3 of the 2016 Act.
- The Tribunal asked Ms McCallum to address it on Section 54 of the 2016 Act with particular reference to the date that the Respondent was asked to leave being 15 June 2018. Ms McCallum explained that they had attempted to serve the Notice to Leave by Recorded Delivery post initially and as that proved unsuccessful they instructed Sheriff Officers to serve the Notice to Leave. Service was effected on 21 May 2018. She submitted that they had not made the application to the Tribunal until 11 July 2018 and therefore more than the requisite 28 days under Section 54 (1) and (2) had passed before the application to the Tribunal was made.

Reason for Decision

- The Tribunal was satisfied that it had sufficient information upon which to make a decision and that it was fair to do so having regard to the overriding objective.
- The Tribunal was satisfied that the Respondent has agreed to pay a monthly rent to the Applicant of £420. The Tribunal was satisfied on the basis of the rent statement and the submissions from the Applicant's solicitor that the Respondent was in arrears of rent of £1820 and that these had accrued since March 2018. The Tribunal accordingly found that the Respondent was in rent arrears by an amount equal to or greater than one month's rent under the tenancy and that he had been in arrears of rent for a continuous period of three or more consecutive months. The Tribunal was satisfied that there were no outstanding housing benefit issues that could have contributed to the arrears.
- The Tribunal was also satisfied that the Respondent had received the Notice to Leave and was aware of the date of the Case Management Discussion.

Decision

- In all the circumstances the Tribunal granted an order for eviction of the Respondent from the Property under Section 51 and Ground 12 of Schedule 3 of the 2016 Act.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Shirley Evans

Legal Member/Chair

Date

26 September 2018